

REMARKS

Obviousness-Type Double Patenting Rejection and Terminal Disclaimer

Without admission of any double patenting and solely to expedite prosecution, a terminal disclaimer is submitted with reference to U.S. Patent No. 6,636,767. Applicants submit this submission overcomes the double patenting rejection noted on page 2, paragraph 2 of the January 27, 2006 Office Action

Statement of Related Cases

This application is one of a number of patent applications or patent with common priority. These are:

Attorney Docket No. (All with prefix of 13033)	Serial No.	Filing Date	Status
2US01	09/409,918	9/29/99	Issued 10/21/03 as US 6,636,767
2USC1	10/665,746	9/19/03	Subject to 1/27/06 Office Action
2USC2	11/197,054	8/3/05	Awaiting first Office Action. Filed with claims copied from US 2004/0153127 A1.

Amendments to Claims

Claims Indicated As Allowable But For Double Patenting Rejection

Claims 14 and 15 were rejected as obvious in view of the claims of U.S. Patent No. 6,636,767. In view of the currently submitted terminal disclaimer, this rejection is obviated. There are no other rejections directed to these claims.

With this amendment, claim 14 is written in independent format incorporating all limitations of its base claim. Claim 15 depends from claim 14. With these amendments, Applicants submit claims 14 and 15 are now allowable.

Remaining Claims

U.S. Patent No. 6,240,316 to Richmond (Richmond '316) places microstimulators in tissue of the airway to treat OSA. While Richmond '316 briefly states microstimulators are

placed in muscle to apply stimuli to muscle (col. 10, lines 8 – 17), the specific teachings of Richmond '316 (taken as a whole) places microstimulators in tissue near nerves “to stimulate motor and/or sensory nerves”. (Col. 7, lines 59 – 60 and lines 66 – 67).

Applicants' specification teaches placing electrodes in muscles and describes specific muscles for such placement. Applicants' electrodes stimulate the muscles directly. This requires much less surgical precision than placing electrodes to stimulate nerves or stimulating muscle via nerve stimulation. Claim 13 is amended to highlight these features. Further, original claim 17 recites “pacing the electrode to cause titanic muscle contractions”. No such pacing is described in Richmond '316. Claim 17 is canceled and its limitations incorporated into claim 13.

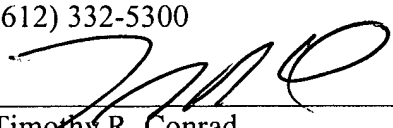
Summary

Applicants respectfully submit this application is now in condition for allowance. Reconsideration and allowance are solicited. If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.

Respectfully submitted,

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Date: July 20, 2006



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